



November 8, 2001

Ms. Susan C. Rocha
Attorney for the San Antonio Water System
Denton, Navarro & Bernal
1700 Tower Life Building
310 South St. Mary's Street
San Antonio, Texas 78205-3111

OR2001-5174

Dear Ms. Rocha:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154587.

The San Antonio Water System ("SAWS") received a request for all cellular phone records since January 1, 1999, and a list identifying all cellular phone users and their phone numbers. You state that some of the requested information has been released to the requestor. You claim, however, that some of the requested information is not information subject to the Public Information Act (the "Act") under section 552.002 of the Government Code. You also claim that some of the requested information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered your arguments and reviewed the submitted information.

The Act applies to "public information," which is defined under section 552.002 as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002; *see also id.* § 552.021. You indicate that most SAWS employees receive an allowance for the use of their personal cellular telephones for work-related business. You explain that, as a result, the cellular telephone bills are sent directly by the cellular service providers to the employees' homes. You state that "SAWS does not

maintain or possess these records.” Based on your representations, we agree that the cellular telephone bills sent to the homes of employees receiving a cellular telephone allowance are not “public information” under that Act because SAWS does not collect, assemble, or maintain these bills.¹ *See id.* § 552.002.

You indicate that eighty-four SAWS employees have been issued SAWS owned cellular telephones. You state that you will release the cellular telephone records for these eighty-four employees after redacting the employees’ home addresses, home telephone numbers, and social security numbers pursuant to section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state that all eighty-four employees elected to keep their home addresses, home telephone numbers, and social security numbers confidential. Therefore, to the extent these employees made these elections prior to SAWS’s receipt of the present request, we agree that SAWS must withhold the employees’ home addresses, home telephone numbers, and social security numbers under section 552.117. SAWS may not withhold this information under section 552.117 for an employee who did not make a timely election to keep the information confidential. We note that, if the employees whose cellular telephone bills were submitted for our review made timely elections under section 552.024, SAWS must withhold these employees’ home addresses under section 552.117.

Finally, you argue that the information you have highlighted in purple in exhibits Number 1 and Number 3 must be withheld under section 552.117 of the Government Code. We note, however, that the information you have highlighted in purple does not consist of employees’ home addresses, home telephone numbers, social security numbers, or family member information. Therefore, the information you have highlighted in purple in exhibits Number 1 and Number 2 may not be withheld under section 552.117 and must be released.

To summarize, we conclude that: (1) the cellular telephone bills sent to the homes of employees receiving a cellular telephone allowance are not “public information” under the Act; (2) SAWS must withhold the home address, home telephone number, and social security number for each employee that made a timely election under section 552.024; and (3) the remaining responsive information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

¹ As we are able to make this determination, we need not address your arguments under section 552.108.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Gregory T. Simpson
Assistant Attorney General
Open Records Division

GTS/KAE/sdk

Ref: ID# 154587

Enc: Submitted documents

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